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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/942,673	08/31/2001	Eric Bouffard	P 283115	7804
909	7590	04/23/2004	EXAMINER	
PILLSBURY WINTHROP, LLP P.O. BOX 10500 MCLEAN, VA 22102			FISCHMANN, BRYAN R	
			ART UNIT	PAPER NUMBER

3618

DATE MAILED: 04/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/942,673

Applicant(s)

BOUFFARD ET AL.

Examiner

Bryan Fischmann

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 7,9-14,16,17 and 22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 22 is/are allowed.
- 6) ☒ Claim(s) 7 and 9-14 is/are rejected.
- 7) ☒ Claim(s) 16 and 17 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Acknowledgements***

1. The amendment filed 3-11-2004 has been entered.

***Claim Objections***

2. Claim 16 is objected to due to the following:

Claim 16 recites "...the air intake pipe extends is located within the seat".

It would seem that either the word "extends" or words "is located" should be deleted from the above recitation.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical

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Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000.

Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

4. Claims 7 and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Yamazaki, et al, US Patent 4,475,616.

Yamazaki teaches a straddle-type vehicle comprising;

an engine (13);

a seat (8) having a front portion positioned generally above the engine (Figure 1);

an air intake system operatively connected to the engine (Figure 3);

at least one opening (40 – see lines 15 and 16 of column 5) adjacent a rear portion of the seat (Figure 1) and supplying intake air to the air intake system; and

a pair of rear fenders (23 – left and right sides) provided adjacent the rear portion of the seat, each rear fender having a front portion, the at least one opening being located on the front portion of at least one of the rear fenders (Figures 1 and 3).

Regarding claim 14, claim 14 is met when the vehicle travels through water, say a puddle, for example, which creates a water wave that is less than the height of the opening.

5. Claims 7 and 9-14 are alternatively rejected under 35 U.S.C. 102(e) as being anticipated by Gagnon, et al, US Patent 6,523,634.

Gagnon teaches a straddle-type vehicle comprising;

an engine (20);

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a seat having a front portion positioned generally above the engine (lines 48-52 of column 5);

an air intake system (Figures 11 and 12) operatively connected to the engine (see comments below);

at least one opening adjacent a rear portion of the seat and supplying intake air to the air intake system (Figures 11 and 12); and

a pair of rear fenders provided adjacent the rear portion of the seat, each rear fender having a front portion, the at least one opening being located on the front portion of at least one of the rear fenders (Figures 11 and 12).

Regarding the claim 7 recitation "an air intake system operatively connected to the engine", it is noted that the air intake system of Figures 11 and 12 supplies air to a radiator. However, note that the engine could not "operate" normally without a radiator. Due to this, the air intake system of Figures 11 and 12 may be considered "operatively connected" to the engine, since without the airflow to the radiator, the engine could not properly "operate". Note also that the radiator and the engine are connected by cooling water hoses, or passages.

Regarding claim 10, the airflow channel shown on Figure 12 may broadly be considered an "intake pipe".

***Allowable Subject Matter***

6. Claim 22 is allowed.

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7. Claims 16 and 17 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims and to overcome the claim objection to claim 16.

***Examiner's Comments***

8. The Examiner initially thought that the Instant Application was "close" to being in a state of allowability, and contacted Johnathan D. Cutler on 3-29-2004 to propose an Examiner's Amendment to correct a minor problem with wording on claim 16 and to amend claim 7 to overcome Gagnon.

However, upon review of the Instant Application by a more senior member of the Patent Office, the more senior member of the Patent Office did an expanded search of the prior art, as claim 7, in his opinion, seemed fairly broad and that art could be found that would "read" on the claim. As a result of this expanded search, the Yamazaki reference was discovered. Accordingly, it became necessary to reopen prosecution on this Application. The Examiner regrets any frustration, or added expense this has caused the Applicant. Accordingly, this action is made non-final.

Also note that, per Patent Office policy, Examiner's Amendments are only entered to put an application in condition for allowance. Therefore, the Examiner's Amendment discussed above was not entered. Therefore, problems intended to be resolved by the Examiner's Amendment are included in this Office Action.


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**Conclusion**

9. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Bryan Fischmann whose telephone number is (703) 306-5955. The examiner can normally be reached on Monday through Friday from 8:30 to 5:00.

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Brian Johnson, can be reached on (703) 308-0885. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 4-18-4  
BRYAN FISCHMANN  
PATENT EXAMINER